

**RESOLUTION NO. 75220**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING AND AUTHORIZING EXECUTION OF AN AMENDMENT TO THE LETTER OF CREDIT AND REIMBURSEMENT AGREEMENT RELATED TO THE CITY OF SAN JOSE FINANCING AUTHORITY'S LEASE REVENUE COMMERCIAL PAPER NOTES PROGRAM AND AUTHORIZING OTHER RELATED ACTIONS**

**WHEREAS**, the City of San José (the "City") and the Redevelopment Agency of the City of San José (the "Agency") have heretofore entered into a Joint Exercise of Powers Agreement establishing the City of San José Financing Authority (the "Authority") for the purpose, among others, of having the Authority issue its instruments of debt to finance the acquisition, construction and improvement of certain public capital improvements; and

**WHEREAS**, the Authority has heretofore determined to adopt and implement a commercial paper program under which the Authority will provide financing for certain public capital improvements for the City; and

**WHEREAS**, on January 28, 2004, pursuant to a Trust Agreement dated as of January 1, 2004 (the "Original Trust Agreement"), between the Authority and Wells Fargo Bank, National Association, as trustee (the "Trustee"), and the provisions of Articles 1 through 4, (commencing with Section 6500) of Chapter 5, Division 7, Title 1 of the California Government Code (the "Act"), the Authority delivered its first issue of its not to exceed \$98,000,000 Tax-Exempt Lease Revenue Commercial Paper Notes (the "Tax-Exempt Commercial Paper Notes"); and

**WHEREAS**, concurrently with the delivery of the first issue of the Tax-Exempt Commercial Paper Notes, the Authority and the City entered into a Site Lease, dated as of January 1, 2004 (the "Site Lease"), pursuant to which the Authority leased from the City certain Property (as such term is defined therein) located in the City, including the buildings and improvements thereon owned by the City; and

**WHEREAS**, concurrently with the delivery of the first issue of the Tax-Exempt Commercial Paper Notes, the Authority and the City also entered into a Sublease, dated as of January 1, 2004 (the "Sublease"), pursuant to which the City subleased the Property from the Authority; and

**WHEREAS**, the payment of principal of and interest on the Commercial Paper Notes (as defined below) are secured by an irrevocable direct pay letter of credit (the "Credit Facility") issued severally, but not jointly, by State Street Bank and Trust Company and the California State Teachers' Retirement System (collectively, the "Banks") pursuant to the terms of a reimbursement agreement (as amended as provided below, the "Reimbursement Agreement") among the Authority, the City, the Banks and State Street Bank and Trust Company, as agent for the Banks; and

**WHEREAS**, on November 9, 2004, the Authority and the City adopted resolutions, after a duly held public hearing, approving using proceeds of the Commercial Paper Notes to finance

the installation and integration of computer software, software licensing, hardware and certain related costs related to the City's billing system previously referred to as the "Integrated Utility Billing, Customer Service and Performance Management System (the "CUSP Project") and currently known as the "Utility Billing System Project" (collectively, the "Projects"); and

**WHEREAS**, the City, in order to increase its flexibility with respect to a portion of the Projects, requested that, pursuant to the Act, the Authority issue its City of San José Financing Authority Taxable Lease Revenue Commercial Paper Notes (the "Taxable Commercial Paper Notes"); and

**WHEREAS**, in order to aid the City, the Authority determined to amend and restate the Original Trust Agreement and to amend certain related documents in order to provide for the issuance of its Taxable Commercial Paper Notes as well as its Tax-Exempt Commercial Paper Notes (collectively, the "Commercial Paper Notes"); and

**WHEREAS**, on June 23, 2005, the Authority and the Trustee entered into an Amended and Restated Trust Agreement (the "Amended and Restated Trust Agreement") in order to provide for the issuance of Taxable Commercial Paper Notes; and

**WHEREAS**, on November 17, 2005, the Authority and the Trustee entered into a First Supplement to Amended and Restated Trust Agreement (the "First Supplement") in order to increase the not-to-exceed maximum aggregate principal amount of Commercial Paper Notes from \$98,000,000 to \$116,000,000, and also to allow the additional use of the Commercial Paper Notes to finance the City's Central Service Yard Phase II Project and the demolition and clean up at the City's Main Service Yard; and

**WHEREAS**, on May 22, 2007, the Authority and the City adopted resolutions, after a duly held public hearing, approving using proceeds of Taxable Commercial Paper Notes to pay for the cost of improvements to the City-owned HP Pavilion and related costs; and

**WHEREAS**, on October 21, 2008, the City and the Authority adopted resolutions approving amending the Amended and Restated Trust Agreement pursuant to a Second Supplement to the Amended and Restated Trust Agreement (the "Second Supplement" and, together with the Amended and Restated Trust Agreement and the First Supplement, the "Trust Agreement") in order to expand the Authority's ability to issue Commercial Paper Notes for the purpose of refunding bonds and other obligations of the City or the Authority pursuant to Government Code Sections 53570 et seq and 53580 et seq; and

**WHEREAS**, the City and the Authority have requested the Banks to extend the scheduled January 26, 2010 expiration date of the Credit Facility, and the Banks are requiring that the Authority, the City and the Banks enter into Amendment No. 2 to Letter of Credit and Reimbursement Agreement (the "Second Amendment") amending certain provisions of the Reimbursement Agreement in connection with such extension;

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:**

**Section 1.** The City Council hereby authorizes the City Manager, the Assistant Director of Finance, or their authorized designees (collectively, the "Designated Officers"), each acting alone, to execute and deliver the Second Amendment in the form posted to the agenda webpage for this joint meeting of the Authority and the City, together with such additions thereto and changes therein as the Designated Officer shall deem necessary, desirable or appropriate upon consultation with the City Attorney.

The City Council hereby affirms its previous delegation of authority to the Designated Officers, each acting alone, to execute and deliver one or more extensions to the Credit Facility or the commitment available under the Reimbursement Agreement for any duration of time that they deem necessary, advisable or prudent, provided that no such extension shall require an annual fee in excess of 2.00% of the commitment available under the Reimbursement Agreement without the approval of this City Council.

**Section 2.** The City Manager, the City Clerk, and any and all other officers of the City are hereby authorized, for and in the name of and on behalf of the City, to do any and all things and take any and all actions, including execution and delivery of any and all documents, assignments, certificates, requisitions, agreements, notices, consents, instruments of conveyance, warrants and documents, which they, or any of them, may deem necessary or advisable in order to consummate the lawful issuance and sale of the Commercial Paper Notes and the consummation of the transactions as described herein, including without limitation, such documents, assignments, certificates and agreements as may be required by the Trust Agreement, the Reimbursement Agreement, the Dealer Agreement or the Issuing and Paying Agent Agreement, the Sublease or the Site Lease (as such terms are defined in the Trust Agreement). Further, the Designated Officers are each hereby authorized to execute a certificate as to arbitrage and other necessary certificates or forms to ensure the continued tax exempt status of the Tax-Exempt Commercial Paper Notes.

Any authority delegated under this Resolution to a specified official of the City may also be exercised by the specified official's authorized designee.


ADOPTED this 8th day of December, 2009, by the following vote:

AYES: CHIRCO, CHU, CONSTANT, HERRERA, KALRA,  
LICCARDO, NGUYEN, OLIVERIO, REED.

NOES: NONE.

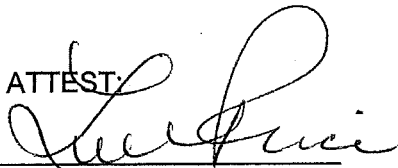
ABSENT: CAMPOS

DISQUALIFIED: PYLE.



CHUCK REED  
Mayor

ATTEST:



LEE PRICE, CMC  
City Clerk